

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Case No.3:08-cr-175
)	JUDGES PHILLIPS/SHIRLEY
CLARK ALAN ROBERTS, and)	
SEAN EDWARD HOWLEY,)	
)	
Defendants.)	

**MOTION FOR DEPOSITIONS
TO PRESERVE TESTIMONY FOR TRIAL**

Comes the Defendant, Clark Alan Roberts, through the counsel, pursuant to Fed. R. Crim. Proc. 15(a) and U.S. Const. amend. V and VI, and herein moves the Court for the entry of an Order allowing the taking of depositions of witnesses who are outside of the jurisdiction of the United States.

In further support thereof, defendant states the following:

(1) The Superseding Indictment alleges involvement in this case by Wyko Tire Technology in Tennessee; Wyko Tire Technology Limited in the United Kingdom (“U.K.”); Eriks Group N.V. in the Netherlands; Wyko China in Shanghai, Peoples Republic of China (“PRC”); and Haohau South China Guilin Rubber Company Limited (HHSC) in PRC. See Superseding Indictment, pp. 1-4 (Doc. 6).

(2) The Superseding Indictment alleges multiple violations of the Economic Espionage Act (“EEA”) and wire fraud by defendants Clark Alan Roberts and Sean Edward Howley concerning a tire building machine that Wyko was alleged to have been designing, manufacturing, and selling at various places in Tennessee, the U.K., and the PRC.

(3) Fed. R. Crim. P. 15(a) provides that a prospective witness may be deposed in order to preserve testimony for trial, and the court may grant the motion because of exceptional circumstances and in the interest of justice. During the deposition, the court may order the deponent to bring and produce certain materials.

(4) As is indicated in a separate motion, there is a large volume of discovery that has yet to be produced by the government. It is impossible for the defendant, at this time, to determine which particular witnesses who reside out of the country will need to be deposed for proof at trial. The defendant also does not have sufficient information at this time to fashion effective examination of those witnesses for presentation of their testimony at trial through deposition. Sufficient information to fashion effective examination for trial presentation would necessarily include all discovery, to include exculpatory information as well as expert/opinion testimony notices by the government, which at this time the government is not required to file until shortly before trial.

(5) Defendant makes the instant motion at this time in order to bring it to the attention of the Court and to meet any necessary filing deadline for pretrial motions. In addition to receipt of the necessary discovery materials that are the subject of a separate motion, the deadlines in the Order on Discovery and Scheduling tied to the trial date will need to be amended so that the defendant has sufficient information to determine which particular out of country witnesses must be deposed and be able to effectively prepare for the examination of those witnesses via deposition for proof consistent with the defendant's Fifth and Sixth Amendment rights to due process, compulsory process, confrontation, fair trial, effective assistance of counsel, and to make a complete defense to the charged allegations.

Respectfully submitted this 15th day of May, 2009.

s/ W. Thomas Dillard
W. THOMAS DILLARD
[BPR # 002020]

s/ Stephen Ross Johnson
STEPHEN ROSS JOHNSON
[BPR# 022140]

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s/ Stephen Ross Johnson